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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CALVARY CHAPEL OF COSTA MESA,

Plaintiff and Respondent,

v.

JOHN ROBERT SCHMIDT,

Defendant and Appellant.

G033388

(Super. Ct. No. 03CC12042)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, David A. Thompson, Judge. Affirmed.

John Robert Schmidt, in pro. per., for Defendant and Appellant.

Kenneth L. Wayman for Plaintiff and Respondent.

* * *

Respondent sought a preliminary injunction to prevent appellant from entering church grounds. The preliminary injunction was granted, and this appeal followed. We find there was no abuse of discretion by the lower court and affirm the order granting the preliminary injunction.

I
FACTS

In October 2003, Calvary Chapel of Costa Mesa (Calvary Chapel or the church) filed a verified complaint seeking injunctive relief to prevent John Robert Schmidt from entering its Santa Ana property. The complaint and the attached declarations averred that Schmidt harassed young women, and the church had received complaints about this behavior. It further stated that on numerous occasions since February 2001, Schmidt had been told he could no longer enter the church building. He has been removed by police, yet returned and refused to leave. The complaint detailed several incidents, including one that occurred on August 27, 2003. When Schmidt was asked to leave, he became loud and disruptive, jumping over pews and striking several congregants along the way. Schmidt was arrested, and by his own admission, pled guilty to misdemeanor assault and trespassing, receiving a sentence of 60 days.

After the complaint was filed, the trial court granted Calvary Chapel's ex parte request for an order to show cause regarding the issuance of a preliminary injunction. The hearing date was set for November 7, 2003, and the parties were directed to follow the briefing schedule for a noticed motion. Thus, Schmidt's opposition should have been filed by October 28, ten days prior to the hearing. (Code Civ. Proc., § 1005, subd. (b).) It was not filed until November 3, 2003, four days prior to the hearing, and according to the church, they were never served with the opposition. In a motion to augment the record,¹ Schmidt asserts the opposition was served on an assistant pastor at the church on November 1. Schmidt does not claim the opposition was ever served on counsel.

¹ The motion to augment the record on appeal is granted as to the proof of service only. The motion is denied as to the remaining documents, which are not part of the record below.

Schmidt's opposition and declaration denied harassing women, disrupting services, or committing any other act that would be "cause" for excluding him from the church. He asserted he was a church member "in good standing" and that his membership had "not been terminated." He admitted, however, that in 1999, he received a memorandum from one of the church pastors telling him he was not to enter the church grounds because of his "harassment of others." Schmidt's declaration stated that he and other "unmarried middle aged men" are subject to unwarranted "mistreatment" and "abuse."

At the November 7 hearing, the court granted Calvary Chapel's request for a preliminary injunction. The order stated: "The Court finds Calvary Chapel has met its burden with regard to (1) probability of success on the merits, (2) immediate threat of irreparable injury, and (3) lack of adequate legal remedy. Furthermore, the balance of hardships tips strongly in favor of Calvary Chapel. The Court has considered the opposition filed by Defendant Schmidt on 11-3-03, even though it was untimely."

II

DISCUSSION

Standard of review

"The law is well settled that the decision to grant [a restraining order] rests in the sound discretion of the trial court." (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69.) "A trial court will be found to have abused its discretion only when it has "exceeded the bounds of reason or contravened the uncontradicted evidence." (Ibid.) "Further, the burden rests with the party challenging the [order] to make a clear showing of an abuse of discretion." (Ibid.)

"This court has traditionally held that trial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as

compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued.” (*IT Corp. v. County of Imperial, supra*, 35 Cal.3d at pp. 69-70.)

“Appellate review of an order *granting* a restraining order involves a limited review of these two factors: the likelihood of success on the merits and interim harm. If the trial court abused its discretion on either factor, the Court of Appeal must reverse. [Citation.]” (*Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, 1252 (*Church of Christ*).)

Calvary Chapel’s likelihood of prevailing on the merits

Schmidt asserts the trial court’s finding that the church was likely to prevail on the merits is “clearly erroneous” because he is a member in the church and therefore has an “interest in common” in using church property. He also asserts there “is insufficient evidence in the record” to support the church’s claims of harassment and disruption.

Addressing the second argument first, we do not review the trial court’s ruling for substantial evidence, but for abuse of discretion, as stated above. Schmidt bears the burden of making a “clear showing” of such an abuse. (*IT Corp. v. County of Imperial, supra*, 35 Cal.3d at p 69.) He does not argue, and even if he did argue, he would not establish such an abuse based on the evidence before the trial court. The court considered five declarations in support of the request for a preliminary injunction. These declarations detailed numerous occasions on which Schmidt was told to leave church property, and indeed, Schmidt admitted a pastor had given him a memorandum instructing him not to return to church grounds. The court also had direct evidence of Schmidt’s disruptive behavior during the August 27 incident. Thus, the trial court did not abuse its discretion by determining that the church was likely to succeed on the merits.

Schmidt’s only other claim on this point is that he was a member of the church, his membership had never been terminated, and therefore the church would not

succeed in barring him from the premises. Indeed, he asserts his membership in the church was “unchallenged.” Schmidt’s only evidence that he is a member of the church is a statement to that effect in his declaration. His apparent basis for the statement that he is a member is a statement attributed to the senior pastor, who allegedly stated, “If you attend the church regularly, then you’re a member and you can vote.” He states that he voted in every membership meeting. Schmidt states the church constitution has no provision to terminate a member, but the constitution itself is nowhere in the record.

The trial court was well within its discretion to determine that Schmidt had not established he was a “member” of the church within the meaning of California law. Under the Nonprofit Corporation Law, a “member” is a person who “pursuant to a specific provision of a corporation’s articles or bylaws, has the right to vote for the election of a director or directors or on a disposition of all or substantially all of the assets of a corporation or on a merger or on a dissolution. . . . ‘Member’ also means any person who is designated in the articles or bylaws as a member and, pursuant to a specific provision of a corporation’s articles or bylaws, has the right to vote on changes to the articles or bylaws.” (Corp. Code, § 5056, subd. (a).)

Schmidt cited no such provision of the church’s bylaws or articles, nor did he provide copies of those documents to the court. Thus, the court did not abuse its discretion by concluding Schmidt had not established he was indeed a church “member.”² Without member status, Schmidt has no property rights (indeed, he would

² This conclusion also disposes of Schmidt’s argument that the church could not maintain a cause of action against him for trespass as a member who had never been terminated. Further, his argument that he was not terminated or expelled in good faith is equally lacking in merit, because he never established he had a membership that required termination. His argument that attempts to evict him were not made “fairly or in good faith, and are legally invalid” are also without merit. A church, like any property owner, has the right to exclude disruptive persons from the premises. (*Church of Christ, supra*, 99 Cal.App.4th at p. 1257.)

not have the unfettered property rights he asserts even if he were a member). In the face of evidence establishing that Schmidt had been asked to leave the premises on numerous occasions, the court did not abuse its discretion in determining that the church was likely to succeed on its claims that Schmidt was a trespasser. An unauthorized entry onto land constitutes trespass. (*Church of Christ, supra*, 99 Cal.App.4th at p. 1252.)

Schmidt makes much of the fact that his membership in the church was “unchallenged” in the record while ignoring the reason that his factual assertions were not directly challenged below is that he filed his opposition and declaration late and untimely, only four days before the hearing, and never served it on Calvary Chapel. The trial court was within its discretion to consider Schmidt’s late-filed papers, but we will not hold it against the church that it did not have the opportunity to file a reply brief and supporting evidence. Thus, the fact that the record does not contain a denial by the church of a specific fact in Schmidt’s declaration is not an admission of the truth of that fact — the church simply had no opportunity to respond. The trial court was entitled to take Schmidt’s factual averments at face value, and to disregard statements that lacked foundation or were otherwise inadmissible, particularly considering that the church had no opportunity to file evidentiary objections.

Interim harm

Schmidt does not directly address the issue of interim harm, but we find no abuse of discretion. “In evaluating interim harm, the trial court compares the injury to the plaintiff in the absence of a restraining order to the injury the defendant is likely to suffer if an order is issued.” (*Church of Christ, supra*, 99 Cal.App.4th at p. 1257.) The trial court was within its discretion in concluding that the continual threat of disruption posed by Schmidt, given the evidence of his past behavior, outweighed Schmidt’s interest in trespassing on private property where he was clearly unwelcome, and has been for some time.

III
DISPOSITION

Schmidt has not met his burden of establishing an abuse of discretion, and therefore, the trial court's order granting the preliminary injunction is affirmed. Calvary Chapel is entitled to costs on appeal.

MOORE, J.

WE CONCUR:

SILLS, P.J.

O'LEARY, J.